

37 Am. Jur. 2d Fraud and Deceit § 108

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

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IV. False Representations

E. Falsity

§ 108. Time for determining falsity; effect of subsequent changes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  13(.5), 13(1)

Trial Strategy

[Real Estate Broker's Liability for Misrepresentation of Income, Earnings, or Profits from Property Sold, 59 Am. Jur. Proof of Facts 3d 511](#)

[Liability of Seller in Residential Real Estate Transaction for Misrepresentation Under "As Is" Contract, 59 Am. Jur. Proof of Facts 3d 463](#)

Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 217](#) (Instructions to jury—Truth or falsity of representation must be determined as of time representation was made—Effect of subsequent changes)

Except where it may be regarded as continuing in character,¹ the truth or falsity of a representation is generally to be determined as of the time it was made.² In other words, a representation must be false at the time it was made to support a claim of fraud.³ Accordingly, a person cannot be held liable for misrepresentation when the person's statement was true at the time it was made,⁴ nor can a person be held responsible for changes in the law that occurred later.⁵ Thus, if the expression of a state of mind or

existing purpose was true when made and was made in good faith, then any subsequent change of purpose made in good faith is not material to the transaction.⁶ There is also authority, however, that the truth or falsity of representations must be determined as of the date they were acted upon.⁷

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Footnotes

- 1 [Childress v. Nordman](#), 238 N.C. 708, 78 S.E.2d 757 (1953).
As to continuing representations, see § 233.
- 2 [Tom Hughes Marine, Inc. v. American Honda Motor Co., Inc.](#), 219 F.3d 321 (4th Cir. 2000).
- 3 [Spreitzer v. Hawkeye State Bank](#), 779 N.W.2d 726 (Iowa 2009); [Mukhopadhyay v. Genesis Corp.](#), 70 A.D.3d 520, 894 N.Y.S.2d 430 (1st Dep't 2010); [Parker v. Byrne](#), 996 A.2d 627 (R.I. 2010).
- 4 [In re Fidelity/Apple Securities Litigation](#), 986 F. Supp. 42 (D. Mass. 1997); [Interim Healthcare of Northeast Ohio, Inc. v. Interim Services, Inc.](#), 12 F. Supp. 2d 703 (N.D. Ohio 1998).
- 5 [Interim Healthcare of Northeast Ohio, Inc. v. Interim Services, Inc.](#), 12 F. Supp. 2d 703 (N.D. Ohio 1998).
- 6 [Powers v. Shore](#), 248 S.W.2d 1 (Mo. 1952).
- 7 [Pasko v. Trela](#), 153 Neb. 759, 46 N.W.2d 139 (1951).
The truth or falsity of a representation is generally to be determined as of the time when it was made and as of the time it was intended to be and was relied upon and acted upon. [Renaissance Leasing, LLC v. Vermeer Mfg. Co.](#), 322 S.W.3d 112 (Mo. 2010).

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